

FCC Received April 16, 1996 @ 2:00 p.m.
Donna A. Bradshaw

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	GC DOCKET No.: 95-172
)	
RAINBOW BROADCASTING COMPANY)	File No.: BMPCT-910625KP
)	File No.: BMPCT-910125KE
For an Extension of Time to)	File No.: BMPCT-911129KT
Construct)	
)	
and)	
)	
For an Assignment of its)	
Construction Permit for)	
Station WREW (TV),)	
Orlando, Florida)	

Volume: 3
Pages: 183 through 299
Place: Washington, D.C.
Date: April 11, 1996

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:)	GC DOCKET No.: 95-172
)	
RAINBOW BROADCASTING COMPANY)	File No.: BMPCT-910625KP
)	File No.: BMPCT-910125KE
For an Extension of Time to)	File No.: BMPCT-911129KT
Construct)	
)	
and)	
)	
For an Assignment of its)	
Construction Permit for)	
Station WRBW (TV),)	
Orlando, Florida)	

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Thursday,
April 11, 1996

The parties met, pursuant to the notice of the
Judge, at 1:32 p.m.

BEFORE: HON. CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of Rainbow Broadcasting Company:

BRUCE A. EISEN, ESQ.
ALLAN MOSKOWITZ, ESQ.
Kaye Scholer Fierman Hays & Handler
901 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 682-3500

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES: (Continued)

On behalf of Press Broadcasting Company:

HARRY F. COLE, ESQ.
ANN FARHAT, ESQ.
Bechtel & Cole, Chartered - Suite 250
1901 L Street, N.W.
Washington, D.C.
(202) 833-4190

On behalf of Rainbow Broadcasting Ltd.:

MARGOT POLIVY, ESQ.
Renouf & Polivy
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 265-1807

On behalf of FCC Trial Staff:

STEWART BLOCK, ESQ.
FCC Trial Staff
1919 M Street, N.W. - Room 602
Washington, D.C. 20554
(202) 418-1719

On behalf of Certain Witnesses:

CHARLES DZIEDZIC, ESQ.
Federal Communications Commission
1919 M Street, N.W. - Room 702
Washington, D.C. 20554

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
None					

E X H I B I T S

<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
None		

Hearing Began: 1:32 p.m.

Hearing Ended: 3:48 p.m.

P R O C E E D I N G S

1:32 P.M.

JUDGE CHACHKIN: On the record.

May I have the appearances of the parties? On behalf of Rainbow Broadcasting Company?

MR. EISEN: Bruce Eisen and Allan Moskowitz.

JUDGE CHACHKIN: On behalf of Press Broadcasting, Inc.?

MR. COLE: Harry Cole and Ann Farhat.

JUDGE CHACHKIN: On behalf of the Designated Trial Staff?

MR. BLOCK: Stewart Block. Mr. Silberman is unavailable today out of town.

JUDGE CHACHKIN: And on behalf of Rainbow Broadcasting, LTD?

MS. POLIVY: Margo Polivy.

JUDGE CHACHKIN: The purpose of this session is to dispose of pending discovery requests. I have just received a copy of a Motion for Summary Decision relating to the financial misrepresentation issue against Rainbow Broadcasting Company. I have just barely perused it. I haven't been able to examine it in detail.

Also, I have learned that apparently there are Notices of Taking Depositions of Commission staff which have

1 been filed by Rainbow Broadcasting Company and Rainbow
2 Broadcasting, LTD. Is that correct?

3 MS. POLIVY: Yes, Your Honor.

4 JUDGE CHACHKIN: How does this differ from the
5 ones which already I have acted on?

6 MS. POLIVY: They don't, Your Honor. I did not --
7 we were not certain whether or not you were going to require
8 each party to file Notices of Deposition to depose the same
9 people. We have already discussed it. Once the Commission
10 rules we will coordinate the dates with witnesses.

11 JUDGE CHACHKIN: I agree. I do not think there is
12 a need for a separate notice. If the Commission grants it,
13 the request, then the same rules which are indicated there
14 apply and presumably, Mr. Cole, you have no objection to
15 them after you finish your questions, obviously, they ask
16 whatever questions they have.

17 MR. COLE: That's correct, Your Honor. I have no
18 problem with that at all.

19 JUDGE CHACHKIN: So I don't think we have to
20 bother with separate notices in view of the parties' views
21 on that.

22 MS. POLIVY: That's fine.

23 MR. DZIEDZIC: Your Honor?

24 JUDGE CHACHKIN: Yes.

25 MR. DZIEDZIC: Are you dismissing the Notices of

1 Deposition?

2 My name is Charles Dziedzic. I represent --

3 JUDGE CHACHKIN: I assume the parties withdraw it
4 under the circumstances.

5 MR. EISEN: Well, if you are not going to require
6 it --

7 JUDGE CHACHKIN: I'm not going to require it.
8 It's been agreed by Mr. Cole. You can go ahead. You follow
9 Mr. Cole and each one of you asks your questions.

10 MR. EISEN: That's fine.

11 MR. BLOCK: And just to make it very clear, we
12 also --

13 JUDGE CHACHKIN: And, of course, you have a right
14 to ask your questions, too.

15 MR. DZIEDZIC: Your Honor, there is one point that
16 I would like to raise at this time and the ruling you have
17 made so far does not preclude its consideration. I can do
18 so at a subsequent date if you think that's appropriate.
19 However, my concern is that as I have related in numerous
20 pleadings, my clients have provided substantial evidence in
21 the past about these matters.

22 You have ruled on the question of their
23 depositions and we will certainly abide by that ruling. My
24 concern is now that I see that we are going to be faced with
25 two separate counsel which plainly represent the same

1 interest asking individual questions of my clients. I would
2 urge and recommend that either Mr. Eisen or Ms. Polivy and
3 Mr. Moskowitz that among these three persons that only one
4 be nominated to ask questions of my clients at the
5 deposition. Absent some showing of a distinct interest in
6 pursuing separate lines of questioning, it is not apparent
7 to me and it is certainly not apparent on the record. Ms.
8 Polivy represented at the first pre-hearing conference her
9 inclination, her disinclination to file a notice of -- let
10 me rephrase that.

11 Ms. Polivy indicated at the first pre-hearing
12 conference that she could not file a Notice of Appearance on
13 behalf of Rainbow Broadcasting Company. Thus, she now
14 appears here in a separate determination by Your Honor as on
15 behalf of LTD. To me, it is hard to distinguish the
16 interests of LTD. and Company here. I don't see how any
17 argument like that can be made.

18 I am also concerned about the fact that there has
19 been discussion of Ms. Polivy being a witness in the
20 proceeding and Your Honor has ruled that there will be
21 sequestration.

22 I ask only that one of these three persons asks
23 questions.

24 JUDGE CHACHKIN: Well, obviously, here is only
25 going to be one person on behalf of each party.

1 MR. DZIEDZIC: They represent separate parties,
2 Your Honor.

3 JUDGE CHACHKIN: I know. You mentioned three
4 people. Obviously, there is going to be one there for each
5 party. Now, whether -- Mr. Eisen, do you have any response?

6 MR. EISEN: My response is I think there isn't a
7 total commonality of interest. You've requested that we
8 file a separate Notice of Appearance. I think we have taken
9 positions in this proceeding with pleadings that, although
10 certainly not at odds with Ms. Polivy and Rainbow
11 Broadcasting, LTD, that show some distinction.

12 We have noted the depositions which we will
13 happily withdraw under your order, but I think that we have
14 a perfect right to ask questions of these witnesses in our
15 capacity as a party.

16 JUDGE CHACHKIN: Well, first of all, Mr. Dziedzic,
17 I am not going to grant your request and require them that
18 only one person ask questions. They represent two distinct
19 parties, although they may have some commonality interests.
20 But the point of the matter is, obviously, there is only a
21 discrete area that anybody could ask questions on and if
22 they are asking duplicate questions -- well, first of all, I
23 am going to urge the parties not obviously to ask questions
24 which have already been fully covered by other parties and
25 if you feel that there is just repetitive questions asked

1 by Mr. Polivy or Mr. Eisen that has already been covered by
2 one or the other, then you certainly could at that time ask
3 for a ruling by me and I will rule on it. But I am sure the
4 parties will control themselves.

5 If there are new areas to explore which have not
6 been covered by Mr. Eisen or Polivy, then they certainly
7 have a right to go into those areas. Obviously, all the
8 parties should avoid repetitive questions. And I think
9 because of the nature of the inquiry I'm permitting that
10 there is not going to be that many questions asked, frankly,
11 that's going to raise a problem.

12 MR. DZIEDZIC: Your Honor?

13 JUDGE CHACHKIN: But we will just have to wait and
14 see what happens.

15 MR. DZIEDZIC: Your Honor, I think Rainbow
16 Broadcasting Company and LTD. find themselves in a very
17 comfortable position in that they literally do get two bites
18 of every apple in this proceeding. And I don't think there
19 is any doubt in the minds of anyone in this room that this
20 situation exists because of the nature of the hearing
21 designation order and exists with respect to a matter that
22 was not subject to discussion in that designation order.

23 I think you have made a very important ruling at
24 this time concerning the rights of both LTD. and Company and
25 I think it will impact on anything that my client's file in

1 connection with Mr. Cole's recent filing with the
2 Commission.

3 I see, you know, at least I'd be placed in a
4 situation where I have to characterize your ruling prior to
5 my filing with the Commission, I'll have to seek an
6 extension from the Commission and await the hearing
7 transcript.

8 If you memorialize your ruling in a written order,
9 I think it would expedite the process --

10 JUDGE CHACHKIN: What ruling am I making to
11 memorialize? They are a party. A party has a right to ask
12 questions. There is no need for me to make a ruling on
13 that. That's obvious. As a separate party in the
14 proceeding, they are a party to all the issues, therefore,
15 they have a right to participate in the depositions.

16 MR. DZIEDZIC: I believe you have made a ruling --

17 JUDGE CHACHKIN: What ruling did I make?

18 MR. DZIEDZIC: I believe you just answered that.

19 JUDGE CHACHKIN: That's not a ruling. I don't
20 need to make a ruling. If you want to argue to the
21 Commission that somehow I erred because I'm saying a party
22 has a right to ask questions at a deposition, go ahead. I'm
23 not writing or issuing a written rule for that purpose.
24 That's so obvious. That's obvious.

25 MR. DZIEDZIC: That actually wasn't the purpose of

1 my request. Obviously, you have decided the matter and
2 we'll take appropriate steps.

3 JUDGE CHACHKIN: Well, go ahead, Mr. Dziedzic.

4 MR. BLOCK: Your Honor?

5 JUDGE CHACHKIN: Yes, Mr. Block.

6 MR. BLOCK: Just to follow up on something I think
7 was left open by Mr. Dziedzic, we would like to reserve the
8 right to file a request and you consider it in the normal
9 course rather than dealing with it out of order here. And
10 we will consider this whether we're going to do it or not,
11 the disqualification of Ms. Polivy as a questioner, not
12 because she -- not because the party shouldn't be there, but
13 because under sequestration orders and because she is going
14 to be a deponent about that very same matter, her attendance
15 may be more of a distraction and instruction and potentially
16 interfering with the normal ordinary deposition process than
17 is necessary. And I think that we will have to consider
18 whether we want to file that motion.

19 JUDGE CHACHKIN: I'm not aware. Is there any law
20 prohibiting a person who may a counsel who may be deposed
21 itself from participating in other depositions? I'm not
22 aware of any precedent.

23 MR. BLOCK: We would be happy to brief the issue.
24 If we decide to go forward on it, we will brief the issue
25 and we will give you adequate precedent for our position. I

1 am sure there is precedent that a lawyer is not entitled --
2 that a party is not entitled to choose a lawyer who is also
3 a witness and, therefore, would be otherwise disqualified
4 from participating in the deposition when there is a city
5 full of lawyers in this town to represent the interest of
6 LTD. at the deposition without having Ms. Polivy there. But
7 that is an issue that we will have to deal with and address
8 in writing and under normal briefing circumstances. There
9 is time to do that before the deposition and we will be sure
10 to get that on file if we are going to file it.

11 MR. DZIEDZIC: Your Honor, you did order that the
12 witnesses be sequestered.

13 JUDGE CHACHKIN: Yes. Well, when she -- yes.
14 What about that? I don't understand that.

15 MR. DZIEDZIC: Well, unless Ms. Polivy testifies
16 first, she obviously couldn't be sequestered.

17 MR. EISEN: Nobody's noted her deposition.

18 MS. POLIVY: Nobody's noted my deposition, Your
19 Honor, number 1. Number 2, this is like Fantasy Land we're
20 having here. I don't understand what's before us.

21 If Mr. Dziedzic wants to file some kind of a
22 motion regarding the depositions that may or may not be
23 taken depending upon what the Commission does, I mean I
24 think that there is a process for doing that. If Mr. Block
25 wants to file a Notice of Deposition and then file some

1 other kind of pleading, there are provisions for doing that.
2 It is very difficult for us to respond to this kind of
3 stream of consciousness that's coming out from this side of
4 the room.

5 JUDGE CHACHKIN: Well, have any depositions been
6 noted, noticed? I haven't seen any of Rainbow or is
7 principals.

8 MS. POLIVY: No.

9 JUDGE CHACHKIN: Or Ms. Polivy.

10 MR. COLE: No. Not yet, Your Honor.

11 JUDGE CHACHKIN: What's the holdup on it?

12 MR. COLE: We're waiting for documents, Your
13 Honor. We're waiting for document production. And that's
14 what I thought what we were going to get to this afternoon
15 is to find out when we might be seeing some documents and
16 the assumption of the parties all along from the -- even our
17 meeting before the first pre-hearing conference was that we
18 would initiate a first round of document requests to find
19 out, to identify who the appropriate deponents would be and
20 to find out what documents might exist about which they
21 could be questioned. And then we would undertake the
22 depositions. We are moving that forward on two separate
23 tracks, one as far as the Bureau of Staffers are concerned,
24 we have received the response, the Commission's response to
25 the FOIA request and I think we are -- assuming the

1 Commission grants the special order which was requested last
2 week, we are in a position to go forward with the staff
3 depositions. But as far as Rainbow is concerned, we have
4 received very few documents at all. And that has been the
5 slow-down factor as far as their depositions.

6 JUDGE CHACHKIN: Do you have something to say, Mr.
7 Eisen?

8 MR. EISEN: Just a quick comment. First, with
9 regard to Mr. Dziedzic's position and what we discussed
10 earlier, your order for better or worse so limits the
11 inquiry of these potential witnesses that -- and I think we
12 are even going to be able to streamline it more informally,
13 that I think the argument falls by the wayside.

14 Secondly, if Press doesn't know by this time who
15 is pivotal to our case and who they would want to depose,
16 then I would be very shocked. And even with the production
17 of documents, if they were to find additional people that
18 they thought should be subject to deposition, they can
19 certainly supplement what they've filed.

20 We've been waiting for these depositions for
21 sometime. In fact, we are almost alarmed that they haven't
22 been filed to date.

23 JUDGE CHACHKIN: Well, I have indicated when
24 discovery ends. And if the parties want to move in any
25 fashion they want to move and if they are aren't completed

1 by then, that's it. We're going ahead with all the dates,
2 the hearing date and the end of discovery date. And I agree
3 with you. There is certainly enough information out there
4 from past sources, certainly depose Ms. Polivy and list
5 other individuals with the understanding there may be some
6 new individual uncovered, although I don't think there will
7 be.

8 MR. COLE: Your Honor?

9 JUDGE CHACHKIN: Yes.

10 MR. COLE: If I might say, my concern about
11 getting documents is not so much the identification of new
12 individuals, but the obtaining of additional documentary
13 information about which we can question them which will add
14 further insight into what actually went down, telephone
15 records, correspondence, other documents reflecting context.
16 Right now we have very little. We do not have any
17 transcript or other record of any interview between Ms.
18 Polivy and the Inspector General's Office because that, as I
19 understand it, was conducted off the record unlike the staff
20 persons. We don't have any record, as I understand it, of
21 Ms. Cook's interview. We are trying to find out how many
22 conversations occurred, who talked to whom and when those
23 conversations occurred. We believe --

24 We have a reasonable basis to assume that there
25 are documents out there that might provide that information

1 which we're trying down before we undertake the depositions
2 because I don't want to be in a position of taking the
3 deposition and then getting a bunch of documents the next
4 week and trying to reopen the deposition.

5 JUDGE CHACHKIN: Well, certainly you could notice
6 the taking of depositions sufficiently far in advance so
7 that it would take care of any documents that you might
8 acquire in the meanwhile.

9 MS. POLIVY: Your Honor?

10 JUDGE CHACHKIN: In other words, if you noticed a
11 deposition is for May 15th or May 10th, presumably, you will
12 get any documents you're going to get before that, but at
13 least the notice will be out.

14 MS. POLIVY: Your Honor?

15 MR. COLE: With all due respect, Your Honor, I
16 asked for documents in February. And we are now in the
17 middle of April and I haven't heard anything from Ms.
18 Polivy.

19 JUDGE CHACHKIN: Well, I'm going to rule on
20 discovery today, but I still think that doesn't preclude you
21 from filing notices to take the depositions of individuals
22 that you know about.

23 MS. POLIVY: Your Honor, may I?

24 JUDGE CHACHKIN: Yes.

25 MS. POLIVY: The materials that Mr. Cole is

1 referring to have something apparently to do with the
2 Inspector General. They have nothing to do with us. We
3 have no knowledge that any such things exist. He's talking
4 about interview notes with the Inspector General or with Ms.
5 Cook. We got the FOIA material the same as Mr. Cole did and
6 we have no information that there is more material. I
7 wonder if he would enlighten us if there is.

8 MR. COLE: I am not inquiring about documents
9 within the possession of the Commission. I am inquiring
10 about documents within the possession of Rainbow and
11 Rainbow, LTD., and their agents and representatives which
12 would reflect communications on behalf of Rainbow with the
13 staff, correspondence --

14 JUDGE CHACHKIN: Well, we just talked about the
15 Inspector General. What information would they have? Were
16 they interviewed by the Inspector General?

17 MR. COLE: Who is that, Your Honor?

18 JUDGE CHACHKIN: We're talking about Ms. Cook and
19 Ms. Polivy.

20 MR. COLE: I believe they were interviewed by the
21 Inspector General.

22 MS. POLIVY: Yes, Your Honor, and that is in the
23 Inspector General's report, but we don't have any --

24 MR. COLE: I know, Your Honor. I understand
25 that --

1 JUDGE CHACHKIN: They wouldn't have any documents
2 about that.

3 MR. COLE: I beg your pardon?

4 JUDGE CHACHKIN: They don't have copies of the
5 transcript.

6 MR. COLE: No, Your Honor, I'm not looking for
7 copies for any documents related to the Inspector General's
8 report. I am looking for documents relating to the
9 underlying conversations, communications between Rainbow,
10 Rainbow, LTD., and/or their representatives or agents, and
11 members of the Commission staff. That's what I understand
12 to be within the scope of the ex parte issue.

13 MS. POLIVY: Your Honor, Rainbow, LTD. was not
14 involved in that at all. Rainbow, LTD., did not come into
15 the picture until after the Commission had approved the
16 assignment application and the assignment took place. But
17 that was after all the dates involved here.

18 JUDGE CHACHKIN: Well, in any event, we are going
19 to go over the document requests in a minute.

20 But you brought up something about the Inspector
21 General.

22 MR. COLE: Your Honor, I'm not --

23 JUDGE CHACHKIN: Apparently, you're going to seek
24 documents from them concerning their -- that would be an
25 interview by the Inspector General. And that's the only

1 thing you've brought up, obviously, as far as your other
2 document requests are concerned, we're going to go over
3 that.

4 MR. COLE: Your Honor, I apologize if I misspoke
5 early on and I did not wish to create the impression that I
6 was seeking from anyone documents concerning the Inspector
7 General's report. I was simply saying that while we have
8 identified through, for example, the Inspector General's
9 report, the fact that Ms. Polivy and Ms. Cook were involved,
10 what we don't know and what is not included in the Inspector
11 General's report is the nature and extent of the
12 communications between Ms. Polivy and Ms. Cook and members
13 of the staff or each other relating to communications by
14 either or both of them with members of the staff.

15 JUDGE CHACHKIN: Well, I don't know anything about
16 Polivy, what conversations Ms. Polivy had and Ms. Cook; but
17 as far as members of the staff, I think the record is pretty
18 clear the nature and extent of such meetings. I don't know
19 what you are going on this espionage mission to find out
20 things that don't exist. That they haven't been mentioned
21 in any Inspector General's report. They haven't been
22 mentioned in any affidavits by the Bureau Staff. I don't
23 know where you get the idea there are other meetings out
24 there somewhere with some being hidden from you.

25 I don't think it exists. You have, you know about

1 all the meetings. You submitted with your Motion for
2 Production of Documents all the extant documents there are
3 out there concerning all the meetings and all the
4 interviews. Now, where in the world -- do you have an idea
5 that there's other meetings that you haven't been told
6 about?

7 MR. COLE: Your Honor?

8 JUDGE CHACHKIN: I mean I don't understand where
9 this is coming from.

10 MR. COLE: Your Honor, again, I am not seeking
11 information necessarily about meetings because I don't know
12 that there were meetings. I do know there were
13 communications. There are at least statements concerning
14 communications between Ms. Polivy and, for example, Mr.
15 Gordon. And it seems to me that -- and we don't know when
16 those communications occur precisely or even the approximate
17 time frames, how many there were, at what point in the
18 processing of the application they occurred. I believe that
19 those communications will be highly relevant to the ultimate
20 disposition of the ex parte --

21 JUDGE CHACHKIN: I assume Mr. Gordon has given an
22 affidavit listing the times that he's communicated with Ms.
23 Polivy, hasn't he?

24 MR. COLE: No, he has not, Your Honor.

25 JUDGE CHACHKIN: He hasn't included that?

1 MR. COLE: No, he has not.

2 MR. BLOCK: Your Honor?

3 JUDGE CHACHKIN: Yes.

4 MR. BLOCK: Let me say why we have not filed yet a
5 request for Ms. Polivy's deposition which we will forthwith.

6 We have been stonewalled as you see from the
7 document request. We have gotten nothing in the way of any
8 documentation, even the documents that they say they don't
9 object to, requests they said they didn't object to, we have
10 gotten no hard document response yet.

11 JUDGE CHACHKIN: Why haven't you submitted
12 documents? The rules require you to exchange documents you
13 have no objection to.

14 MR. EISEN: Well, there is a motion to compel
15 that's been filed.

16 JUDGE CHACHKIN: Yes, but under the rules, if a
17 motion for production of documents is filed with a party and
18 the party has no objection to any of those documents, there
19 is required to forthwith exchange at least those documents.

20 MR. EISEN: But there has -- there was an
21 objection filed.

22 JUDGE CHACHKIN: Not with every document. You
23 didn't object to all the document request.

24 MR. EISEN: Well, we have provided documents to
25 Press as a matter of fact.

1 JUDGE CHACHKIN: And, also, have you provided
2 documents to the staff?

3 MR. EISEN: No.

4 JUDGE CHACHKIN: Why not?

5 MR. EISEN: We're not stonewalling it.

6 MR. BLOCK: Well, let me continue the point which
7 is that it was my intention and I haven't concluded that
8 this is not the best way of doing it still, not to take Ms.
9 Polivy first, but to take her last after we have got the
10 statements of the independent eye-witnesses and then ask her
11 questions. I wasn't intending in my own mind at this point
12 to deal with her first. I don't ordinarily do a deposition
13 sequence in that way. Wanted to build a case around it.

14 If that is the case, then taking her first simply
15 because she is going to be a witness and also an examiner
16 puts me at a disadvantage in the kind of examination I
17 wanted to build.

18 Notwithstanding that fact, however, we will file a
19 deposition notice and we will see what makes the most sense.
20 But we can't do anything, we can't ask the first question to
21 her about her intention, about what she was doing and why
22 she was doing it until we get the documents to be able to
23 cross-examine her. So there is a sequence going on in terms
24 of documents that Mr. Cole and I both have been waiting for
25 documents before we can go forward on any real examination

1 on these issues.

2 JUDGE CHACHKIN: Well, this is the first time
3 anyone has raised a sequestration problem and I hadn't
4 thought it through, but I noticed that no one objected to
5 Ms. Polivy's intervention in this proceeding on behalf of
6 LTD.

7 Now, I have not considered the sequestration
8 problems because nobody has raised it up to now.

9 MR. BLOCK: We will have to deal with that subject
10 in time.

11 JUDGE CHACHKIN: It's only been raised for the
12 first time today

13 MS. POLIVY: Your Honor?

14 JUDGE CHACHKIN: Yes.

15 MS. POLIVY: As I noted earlier, I have not been
16 noticed for deposition. As to whether or not I will be a
17 witness is something that we have not determined. I will be
18 glad if I am noticed for deposition to be the first deponent
19 so there is no question. But Rainbow --

20 Mr. Block's explanation as to how he wishes to
21 proceed I don't think is the thing that determines. If
22 there is a problem about sequestration, then the problem is
23 easily alleviated by having my deposition taken before
24 anyone else's. And I am certainly willing to do that and I
25 am willing not to stand on ceremonies as far as the notice

1 is concerned. I am willing to cooperate fully with making
2 myself available. That really is at this point all I can
3 say is, we have received no Notice of Deposition. And, when
4 I do, I'll be more than happy to cooperate with them in
5 scheduling it.

6 JUDGE CHACHKIN: I presume nobody has yet had a
7 chance to look at the Motion for Partial Summary Decision.

8 MR. COLE: I was not even aware it had been filed,
9 Your Honor.

10 MR. BLOCK: Nor I.

11 JUDGE CHACHKIN: It was waiting for me when I got
12 back from lunch.

13 In any event, first, let's go over the staff's
14 Motion to Compel Production of Documents.

15 MR. BLOCK: How would you like to handle it, Your
16 Honor?

17 JUDGE CHACHKIN: What do you mean how would I like
18 to handle it?

19 MR. BLOCK: Would you like me to present
20 something?

21 JUDGE CHACHKIN: Well, if I have a problem, I'll
22 ask you about it. If I want parties' response, I'll ask
23 them about it.

24 (Continued on next page.)

25 //